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Human rights situation in Palestine and other occupied Arab territories

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk

Summary

The present report is the final report of the current Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, submitted in accordance with Commission on Human Rights resolution 1993/2 A and Human Rights Council decision 2/102. In the report, the Special Rapporteur addresses Israeli settlements in the West Bank, including East Jerusalem, and the wall in the context of the tenth anniversary of the advisory opinion of the International Court of Justice, and considers the policies and practices of Israel in occupied Palestine in light of the prohibition on segregation and apartheid. He also addresses concerns in relation to the deterioration of the human rights situation of Palestinians living under the Israeli blockade in the Gaza Strip.

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I. Introduction

1. In his final presentation to the Human Rights Council, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 would like to underscore the importance of this mandate as providing an independent witness to the evolving effects of the continuing occupation of Palestine by Israel. This exposure is centred upon the presentation of information received on the persistence of severe violations of international humanitarian law and international human rights law. Bearing witness provides a record of violations by Israel and its defiant attitude, and challenges the United Nations to take steps to ensure compliance. It should be remembered that the suffering of the people of Palestine is inseparably linked to the partition arrangements initially proposed by the United Nations in 1947, and which were never implemented or revised in a manner that takes full account of the rights of the Palestinian people, above all their inalienable right of self-determination.

2. It was unfortunate that Israel refused even minimal cooperation with this mandate to the extent of allowing the Special Rapporteur to have access to occupied Palestine during the past six years or of responding to several urgent appeals addressing specific situations of immediate concern that fell within the purview of the mandate. This Special Rapporteur was expelled in December 2008 when attempting to enter Israel to carry out a mission of the mandate to visit occupied Palestine, and detained overnight in unpleasant prison conditions. Such humiliating non-cooperation represents a breach of the legal duty of States Members of the United Nations to facilitate all official undertakings of the organization. Although it has been possible to gain information needed to report on the situation confronting Palestinians living under occupation, non-cooperation deprives the mandate of direct interaction, including the receipt of testimony bearing on international law grievances from representatives of the Palestinian people. It is to be hoped that the next Special Rapporteur to be appointed will receive sufficient backing from the Human Rights Council to induce cooperation from Israel and better protection against defamatory attacks by some non-governmental organizations (NGOs) than was the experience of the current mandate holder.

3. *International Law*. An abiding theme of the reports of the Special Rapporteur during the past six years has been the consistent failure of Israel to comply with clear legal standards embodied in the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and elsewhere in international humanitarian law and international human rights law. This pattern, as will be detailed below, is flagrant in relation to the wall, settlements, East Jerusalem, the Gaza Strip, water and land resources, and the human rights of Palestinians living under occupation. Also relevant is the failure of the United Nations to ensure implementation of the recommendations as to international law contained in two high-profile Human Rights Council reports of 2009 and 2013, respectively those of the United Nations Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48) and of the fact-finding mission to investigate the human rights implications of the Israeli settlements (A/HRC/22/63). To the extent such a pattern is tolerated, it undermines respect for international law.

4. *Palestine*. In the light of the General Assembly's recognition of Palestine as a non-member observer State in Assembly resolution 67/19 of 29 November 2012, it seems appropriate to refer to territory under Israeli occupation as "Palestine" rather than as "Occupied Palestinian Territories". Such a shift in language also emphasizes the inadequacy of the international law framework available to address a condition of prolonged occupation that has now extended for more than 45 years. Special steps and procedures need to be adopted that will confer rights and establish the rule of law. To

sustain indefinitely an oppressive occupation containing many punitive elements also seems designed to encourage residents to leave Palestine, which is consistent with the apparent annexationist, colonialist and ethnic-cleansing goals of Israel, especially in relation to the West Bank, including East Jerusalem.

5. *Corporate responsibility*. Recent reports have underscored the potential implications for corporations and financial institutions that engage with and profit from Israeli settlements. The establishment and continued development of settlements is in violation of article 49(6) of the Fourth Geneva Convention, an assessment reinforced by the International Court of Justice in its advisory opinion of 2004 on the wall. Such an initiative has tried at all times to proceed cooperatively with the economic actors involved, and has acknowledged instances of compliance with international law and relevant United Nations guidelines and the encouraging recent indication of governmental and European Union reinforcement of these emergent obligations. This trend also converges with and reinforces the social mobilization of civil society in a variety of initiatives, especially the growing boycott, divestment and sanctions campaign.

6. *"Legitimacy war"*. In the pursuit of Palestinian rights under circumstances of prolonged occupation, there is increasing reason to believe that despite the authority of international law and the expressed will of States Members of the United Nations, the situation is essentially frozen, if not regressing. In addition, Palestinians seem increasingly disillusioned with armed resistance and with traditional intergovernmental diplomacy. Palestinian hopes for the realization of their fundamental rights have now shifted to engagement in a "legitimacy war", which involves a worldwide struggle to gain control over the debate about legal entitlements and moral proprieties in the conflict supported by a global solidarity movement that has begun to sway public opinion. The United Nations has a crucial role to play in this process by lending support to Palestinian claims of rights and providing assessments of associated grievances resulting from the violation by Israel of international humanitarian law and international human rights principles and standards.

7. *Language*. The Special Rapporteur believes that the language used to consider Palestinian grievances relating to international humanitarian law and international human rights law in Palestine needs to reflect everyday realities, and not remain beholden to technical wording and euphemisms that mask human suffering resulting from violations. It seems therefore appropriate to describe such unlawful impositions on the people resident in the West Bank by reference to "annexation" and "colonial ambitions" rather than "occupation". Whether these impositions constitute "apartheid" is discussed in more detail below. Such clarifications at the level of language reinforce the contention that it is a matter of urgency to pursue more concerted efforts within United Nations venues to implement the rights of the Palestinian people.

8. *Emergency in Gaza*. Developments in the region, combined with an unlawful blockade maintained since mid-2007, has created a serious emergency situation in the Gaza Strip that threatens the entire population. From the perspective of international law, as argued in prior reports (A/HRC/20/32), Gaza remains "occupied", despite the implementation by Israel of its "disengagement" plan in 2005, due to the control of borders, airspace and coastal waters, and periodic military incursions. The present situation is dire, as massive infrastructural failures cause daily hardship for the population, who are also at risk of epidemics. At the time of writing, with insufficient quantities of fuel reaching Gaza, electricity is available only for short periods, making it impossible for hospitals to provide proper treatment for seriously ill patients suffering from cancer and kidney ailments. The situation is aggravated by persisting tensions between the Palestinian Authority and the governing authorities in Gaza, and by the breakdown of cooperation along the border with Egypt. Egyptian security concerns in Sinai have led to greater restrictions at the Rafah crossing, and to the destruction of the tunnel complex in southern Gaza that had eased some

of the difficulties caused by the blockade. Some countries, notably Turkey and Qatar, have responded to this situation by providing emergency relief, but much more assistance is required, including pressure upon Israel to end the unlawful blockade.

9. *Urgency*. The stark reality is that the beleaguered occupied people of Gaza, over half of whom are children, are not receiving the protection to which they are entitled under international humanitarian law, which imposes an overall duty on the occupying Power to act in such a manner as to protect the civilian population from harm. Given the failure of Israel to live up to these obligations as set forth in the Fourth Geneva Convention, the United Nations and international society generally is challenged to take urgent action. The principles embedded in the concept of the responsibility to protect would seem to have a special applicability to the emergency conditions currently existing in Gaza that are being brought to the attention of the world by graphic pictures of sewage in the streets; widespread flooding; seasonal cold, including snow; and children entrapped by these conditions.

II. The wall and the 2004 advisory opinion

10. July 2014 will mark 10 years since the International Court of Justice gave its near unanimous advisory opinion on the legal consequences of the construction of a wall in the Occupied Palestinian Territory (A/ES-10/273 and Corr.1). The refusal of Israel to implement this assessment of international law by the highest judicial body in the United Nations is cause for serious concern.

11. The question put to the Court by the General Assembly bears repeating: "What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, ..., considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?"[1] The International Court of Justice was unequivocal in its reply. In summary, it concluded that the construction of the wall in occupied Palestine, including East Jerusalem, and its associated regime, was contrary to international law. The crucial point is that it would not have been unlawful for Israel to build a security wall on an established international border, but to encroach unilaterally on territory occupied in 1967 was a flagrant violation of international law. The Court stated that Israel had a continuing duty to comply with its international obligations in this regard. It found that Israel was obliged to end the illegal situation, cease construction and dismantle the wall in the Occupied Palestinian Territory, and to make reparations for all damage caused as a result of the wall (A/ES-10/273 and Corr.1, para. 145).

12. In addition to the conclusions addressing the obligations of Israel, the Court stated that all States are obliged not to recognize the illegal situation arising from the wall, and that States parties to the Fourth Geneva Convention were obliged to ensure compliance by Israel with that Convention. Finally, the Court suggested that the United Nations, and especially the General Assembly and the Security Council, should consider further action to overcome this illegal situation resulting from the construction of the wall and its associated regime (ibid., para. 163 (3)(D) and (E)).

13. In clear defiance of international law, Israel has continued construction of the wall and maintains on its website a map of 30 April 2006 showing its revised route.[2] At the time

[1] General Assembly resolution ES-10/14.

[2] See www.securityfence.mod.gov.il/Pages/ENG/route.htm.

of the advisory opinion, the Secretary-General estimated that approximately 180 km of the wall had been completed (A/ES-10/273 and Corr.1, para. 82). Since that time, parts of the wall have been re-routed.[3] In 2013, the Secretary-General reported that approximately 62 per cent of the wall had been completed (A/68/502, para. 22). A further 10 per cent was under construction, and construction of the remaining 28 per cent of the planned route had not yet commenced. Upon completion, the wall is expected to run approximately 708 km.

14. About 85 per cent of the planned route of the wall lies within the West Bank, and will cut off and isolate 9.4 per cent of the West Bank territory, including East Jerusalem and so-called No-Man's Land.[4] Palestinian communities affected by the wall experience varying degrees of isolation and restrictions on their freedom of movement. The seam zone's[5] associated permit regime requires Palestinians to continually apply for temporary permits to allow them to reside in their home area and carry on aspects of their lives that require entering or exiting the seam zone. In order to have access to farming land beyond Israeli-controlled access gates, leave and return for work, have access to education, health and other services, visit family and friends or arrange for visits to those communities for non-resident Palestinians, prior permission by Israeli authorities is necessary. This permit procedure imposes daily hardships on many Palestinians.[6]

15. The Ministry of Defense states that "the Security Fence does not annex territories to the State of Israel, nor will it change the status of the residents of these areas".[7] Israel maintains that the purpose of the wall is to ensure security and protect Israeli citizens from terrorist attacks. In 2011, the Israeli High Court of Justice supported this reasoning regarding security in rejecting NGO petitions which claimed that the permit regime was aimed at expropriating and annexing Palestinian land and which argued that its exclusive application to Palestinians, and not, for example, to settlers in the zone, was discriminatory and comparable to the Pass Laws of apartheid-era South Africa.[8] However, the High Court's assertion does not overcome the conclusion by the International Court of Justice that the grave infringements of the rights of Palestinians caused by the wall in the Occupied Palestinian Territory were not necessary to satisfy legitimate Israeli security requirements (A/ES-10/273 and Corr.1, para. 136).

16. If protection of Israeli citizens were indeed the only reason for the wall and the associated regime, it begs the question of why Israel continues to support the expansion of illegal settlements in the West Bank, thus moving an increasing number of Israeli citizens into the very area from which it says the risk emanates. That continued settlement on West Bank land, including East Jerusalem, cut off by the wall seems to be creating a fait accompli amounting to de facto annexation, is a grave concern raised by the Human Rights Council, which has demanded that Israel comply with the advisory opinion (Council resolution 22/26).

17. For Palestinian residents isolated from the rest of the West Bank by the wall, and living under the permit regime and other restrictions, the issue is not only about status, but

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[3] Some decisions of the Israeli High Court have reconnected communities with the West Bank. Office for the Coordination of Humanitarian Affairs office in the occupied Palestinian territory (OCHA-oPt), Barrier Update (July 2011), p. 5.

[4] See www.ochaopt.org/documents/ochaopt_atlas_barrier_affecting_palestinians_december2011.pdf.

[5] A designated "closed military zone" between the wall and the Green Line.

[6] See HaMoked: Center for the Defence of the Individual, "The permit regime: human rights violations in West Bank areas known as the 'seam zone' " (2013). www.hamoked.org/files/2013/1157660_eng.pdf.

[7] See www.securityfence.mod.gov.il/Pages/ENG/route.htm.

[8] OCHA-oPt, Barrier Update, p. 8; HaMoked, "The permit regime", pp. 14–15. See also Virginia Tilley (ed.), *Beyond Occupation* (2012), pp. 151-155.

also about how life is made untenable, inducing more and more Palestinians to abandon their land and leave. By way of illustration, for years, the village of Nabi Samuel reportedly attempted to improve the village school. The village's location in the seam zone complicates access to outside education. The United Nations Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator stated on her 2011 visit to the village: "I am horrified by the way the Barrier affects Palestinians. It divides communities and inhibits the provision of services. I visited a one-room school with no windows and very few facilities, which can't be improved because the planning rules don't allow it. This is unacceptable."[9] In September 2013, the village succeeded in installing a container on the school ground to serve as an additional classroom. However, the school is now in danger of losing one of its two rooms for lack of a building permit.[10] These acutely burdensome living conditions lead to the displacement of long-term residents. In 2012, the Village Council noted that over the past decade at least 10 families have left the village, which counts some 260 residents.[11]

18. Another case in point is the approximately 25 houses making up the village of Al-Numan. It is also encircled by the wall, with its only access through an Israeli checkpoint, and restricted from unlicensed building activity, effectively preventing families and the population of the village from growing, as housing needs cannot be met.[12] Consequently, the villagers have seen their own number fall while observing the neighbouring illegal Har Homa settlement's steady growth in occupied territory. In 2006 Al-Haq published a case study on the indirect forcible transfer taking place in Al-Numan.[13] These are but two concrete examples of the obstacles communities face daily. In 2012, the Office for the Coordination of Humanitarian Affairs estimated that approximately 7,500 Palestinians still lived in the seam zone,[14] down from an estimated 10,000 people in 2003.[15] Upon completion of the wall, an estimated 25,000 Palestinians would be located in the seam zone, a figure which does not include the Palestinian population in East Jerusalem.[16]

19. Regular demonstrations against the wall and its associated regime staged in affected villages are often violently suppressed.[17] A website for the village of Bil'in, a farming community, describes its struggle thus: "[Bil'in] is fighting to safeguard its land, its olive trees, its resources ... its liberty... Supported by Israeli and international activists, Bil'in residents peacefully demonstrate every Friday in front of the 'work-site of shame'. And every Friday the Israeli army responds with both physical and psychological violence."[18]

20. The impact of the wall on people's lives is reflected in the progress report of the Board of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory (see A/ES-10/599). As at June 2013, 36,803 claim forms

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[9] OCHA, Barrier Update, p. 14.

[10] Documentation collected by OHCHR.

[11] See www.unrwa.org/galleries/photos/nabi-samuel-"we-are-living-inside-prison.

[12] See www.alhaq.org/advocacy/topics/wall-and-jerusalem/594-visiting-a-ghost-town-drawing-attention-to-the-plight-of-al-numan-village.

[13] Available from www.alhaq.org/10yrs/images/stories/PDF_Files/2%20Al-Numan%20Village%20-%20a%20case%20study%20of%20indirect%20forcible%20transfer%20-%20November%202006.pdf.

[14] OCHA-oPt, "The humanitarian impact of the barrier" (July 2012), p. 1 (www.ochaopt.org/documents/ocha_opt_barrier_factsheet_july_2012_english.pdf).

[15] The Special Rapporteur believes that both the re-routings of sections of the wall and Palestinians leaving due to the wall and its associated regime have contributed to the decrease in numbers.

[16] OCHA-oPt, Barrier Update, p. 11.

[17] See Palestinian Grassroots Anti-apartheid Wall Campaign, www.stopthewall.org/2013/04/07/further-suppression-demonstrations-occupation; B'Tselem, www.btselem.org/demonstrations; and the Russell Tribunal on Palestine, *Findings of the South Africa Session* (2011).

[18] See www.bilin-ffj.org/index.php?option=com_content&task= blogcategory&id=15&Itemid=34.

for registration of damage had been received and, of the almost 9,000 claims decided, all but 576 claims were found to meet the eligibility criteria for inclusion in the register. Claimants may submit claims under categories of losses including: agriculture; commercial; residential; employment; access to services; and public resources.[19]

21. In his first report to the General Assembly, the Special Rapporteur recommended seeking the assistance of the Security Council for the implementation of the advisory opinion (A/63/326, para. 51(b)). In the face of the unequivocal opinion of the International Court of Justice, and of General Assembly resolution ES-10/15, in which the Assembly called on Israel to comply with the advisory opinion, Israel has defiantly acted as if international law and international judicial authority has no bearing on its policies and behaviour. With the tenth anniversary of the advisory opinion approaching, it is time again to examine what legitimate action by the international community can be taken to achieve compliance with international law, as set out by the International Court of Justice. It is often supposed that because the legal findings of the Court were embedded in an "advisory opinion" it has no bearing on the status of the legal obligations of Israel. This is incorrect. An advisory opinion of the International Court of Justice is as determinative with respect to the authority of international law as a judgement in a dispute between two or more States, but unlike such a judgement between States that can be directly enforced by reliance on Article 94 of the Charter of the United Nations, an advisory opinion cannot be so implemented. However, this difference does not weaken the obligation of Israel to act in accordance with this authoritative determination of international legal obligations, and its failure to do so puts it in breach of international law and responsible for the cumulative harm inflicted on the Palestinian people. It is past time for the United Nations to take action that seeks to protect the rights of the Palestinian people bearing on the sanctity of their territory and its relation to the underlying right of self-determination.

III. Israeli settlements and the fragmentation of occupied Palestine

Facts on the ground

22. The hallmark of Israel's 46-year prolonged annexing occupation of Palestine has been the determined pursuit by Israel of settlement construction and expansion in the West Bank, including East Jerusalem, in defiance of its international law obligations (A/68/513, paras. 4–5). This was clearly reflected in the findings of the international fact-finding mission on the implications of Israeli settlements (A/HRC/22/63). Throughout the past six years, the Special Rapporteur has periodically reported on the expansion of settlements and outposts[20] in the West Bank, including East Jerusalem (in breach of Israel's own commitment to freeze settlement expansion, including natural growth under the 2003 Quartet road map), and the impact of associated policies and practices on the human rights of Palestinians living in the occupied territory.[21] While the pro-settlement camp claims that "settlements aren't the problem",[22] this view stands in sharp contrast to the facts on the ground.

23. Increasing fragmentation of the West Bank, including East Jerusalem, by way of a combination of policies and practices including, but not limited to: the wall; the creation of

[19] Rules and Regulations Governing the Registration of Claims, art. 11, para. 1. Available from www.unrod.org/docs/UNRoD%20Rules%20and%20Regulations.pdf.

[20] Outposts are settlements which, although often established with some kind of Government support, are not officially recognized under Israeli law.

[21] A/63/326, A/HRC/13/53/Rev.1, A/65/331, A/HRC/16/72, A/66/358, A/HRC/20/32.

[22] See www.jpost.com/Opinion/Editorials/Settlements-arent-the-problem-330306.

seam zones; checkpoints; zoning and planning restrictions; demolition of homes and forced evictions (particularly of Bedouin communities in Area C); revocation of residency rights; the designation of vast tracts of land in the West Bank as closed military zones or natural reserves; and the expropriation of land for settler agriculture or industrial zones, may irreversibly disrupt the contiguity of the West Bank, undermining a just and sustainable two-State solution.[23]

24. Peace Now, an Israeli NGO, called attention to "Bibi's settlements boom" in 2013, reporting that tenders had been published for 3,472 new units in settlements, and that plans had been promoted for 8,943 new settlement units in the eight months since the Netanyahu Government took office in March 2013.[24] Despite a brief and limited 10-month moratorium on settlement construction in 2010 during the last round of unsuccessful peace talks (which also demonstrated the ability of Israel to halt settlement activity if desired), Israel issued tenders for the construction of 5,302 housing units in the West Bank, including East Jerusalem, during the period from March 2009 to January 2013.[25]

25. The timing of announcements regarding settlement expansion has also been provocative, with the two most recent announcements coinciding with the first and second round of Palestinian prisoner releases by Israel in the context of the renewed peace negotiations that began in August 2013. The passage of time under the status quo has not been a neutral factor for Palestinians, as more "facts on the ground" are created daily, strengthening the position of Israel in its preferred mode of power-based negotiations (as opposed to negotiations based on rights and international law). Despite protestations over settlement activity by the United Nations, and notably also by the United States of America[26] and the European Union, Israel continues to use State power and resources to promote its defiant settlement policies. The Secretary-General has described Israel as playing a leading role in the construction and expansion of settlements (A/68/513, para. 3).

26. This latter factor is important to note if the removal of existing settlements were to occur as part of a peace agreement. Approximately half of all settlements in the West Bank can be classified by type as either "quality of life", or a mixture of "quality of life/ideological", which tend to be inhabited by predominately secular or mixed settler populations.[27] Israel might be able to re-incentivize economic settlers, who were persuaded to move to the West Bank settlements through various government benefits and incentives, to re-settle to the west of the pre-1967 borders of Israel. However, it would have a more difficult time removing the more religious settlers who live in approximately 70 settlements across the West Bank, all the more so as population growth in the settlements (approximately 2.8 per cent) continues to outstrip population growth in Israel.[28] It also remains to be seen whether an emergent settler unity precludes implementing a future peace agreement based on inducing economic settlers to return to Israel. Certainly, it may be anticipated that ideological settlers would do their best to prevent such a division and the implementation of such an agreement.

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[23] A/HRC/25/38, A/HRC/25/40, A/68/502 and A/68/513.

[24] See http://peacenow.org/Bibis%20Settlements%20Boom%20-%20March-November%202013%20-%20FINAL.pdf.

[25] See http://peacenow.org.il/eng/sites/default/files/summary-of-4-years-of-netanyahu-government.pdf.

[26] See www.haaretz.com/news/diplomacy-defense/1.556645; www.un.org/News/Press/docs/2013/sgsm15427.doc.htm.

[27] Among 136 West Bank settlements listed by Peace Now, 25 settlements fall under the type "quality of life", 35 under the type "quality of life/ideological", 70 under the type "ideological" and six under the type "ultra-orthodox" (see http://peacenow.org.il/ eng/content/settlements-and-outposts).

[28] Palestinian Centre for Human Rights submission to Special Rapporteur, 22 November 2013.

27. A small minority within the ideologically motivated settlers has been responsible for most of the violence committed against Palestinian men, women and children and against their homes and properties. In the first 10 months of 2013, 361 incidents of settler violence were reported, including 87 resulting in the injury of Palestinians (compared to a total of 366 incidents in 2012).[29] Most of these incidents occurred in the Nablus, Ramallah and Hebron governorates. Settler violence is reinforced by a lack of accountability and the related failure of Israeli law enforcement forces to protect vulnerable Palestinian communities (A/68/513, paras. 42-52).

28. Housing demolitions and displacement of Palestinian communities also kept up with the settlement boom in 2013. From January to October 2013, 533 Palestinian homes and livelihood structures were demolished, including 205 residential structures, displacing 969 people, including 441 children. International donor-funded structures, paid for by taxpayers around the world, were not spared from demolition, and 96 donor-funded structures, including residential, livestock-related and water and sanitation facilities in the West Bank were demolished by Israeli authorities.

29. Herding communities living in small villages in Area C have been particularly vulnerable to these Israeli practices. In 2013, the United Nations High Commissioner for Human Rights twice spoke out against the demolition of at least three Bedouin and herder communities in the northern Jordan Valley.[30] Violations by Israel of international law extend to actively preventing the provision of urgent humanitarian assistance from the international community to the affected Palestinian communities.[31]

The future of outposts

30. In July 2012, the Government-appointed committee to examine the state of construction in the West Bank, chaired by Supreme Court Justice (Ret.) Edmund Levy (the Levy Committee), issued its report on the legal status of Israeli settlements in the West Bank and, in particular, set forth recommended steps to regularize the construction of "illegal settlements" (outposts) in the West Bank (currently numbering over 100). It concluded that the international laws of occupation, including the Fourth Geneva Convention, did not apply to Israel's unique situation in Judea and Samaria (the name given the West Bank in internal Israeli discourse and signalling a claimed biblical attachment), and that Israelis had the legal right to settle in the West Bank despite the international consensus.

31. The conclusions of the Levy Committee not only reflected disregard of international law but also set forth a quasi-legal retroactive endorsement of outposts, formally unauthorized under Israeli law. In fact, the Committee determined that existing outposts were "carried out with the knowledge, encouragement and tacit agreement of the most senior political level, government ministers and the Prime Minister, and therefore such conduct is to be seen as implied agreement".[32] A previous report of 2005 by Talia Sasson, a former Chief State Prosecutor, concerning the illegal outposts had not gone so far as to implicate the senior-most political echelon of the country, but had found the World Zionist Organization (fully funded from the State Treasury), the Ministry of Construction and Housing, the Civil Administration in Judea and Samaria, and the Assistant to the Defense Minister complicit in the establishment of new unauthorized outposts, and exposed an

[29] See www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2013_11_25_english.pdf.
[30] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13662&LangID=E and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13786&LangID=E.
[31] www.ochaopt.org/documents/unhc_obstriction_humanitarian_assistance_english.pdf.
[32] See http://unispal.un.org/UNISPAL.NSF/0/D9D07DCF58E781C585257A3A005956A6.

unelected bureaucracy in charge of creating new outposts without political authorization or oversight.[33]

32. The Special Rapporteur notes that while Sasson's report labelled the outposts as illegal under Israeli law and recommended their dismantlement, developments on the ground since then have shown that successive Israeli Governments preferred to follow the approach endorsed post facto by the Levy Committee. Of 1,708 units constructed in West Bank settlements in the first half of 2013, 180 units were located in outposts (see A/HRC/25/38). In May 2013, Israel announced plans to legalize four outposts in the West Bank (in other words to recognize them as official settlements).[34] While the Netanyahu Government never adopted the Levy report, the Knesset Constitution, Law and Justice Committee is expected to debate the report early in December 2013, indicating that it is being taken seriously at the highest levels in Israel.[35]

"Demographic balance" in East Jerusalem

33. The status of East Jerusalem remains one of the most contentious issues to be resolved in the Israeli-Palestinian conflict. It is worth recalling that in its resolution 478 (1980), the Security Council affirmed that the Basic Law of Israel proclaiming Jerusalem, including the annexed area, as the capital of Israel constitutes a violation of international law and does not affect the application of the Fourth Geneva Convention in Palestine, including East Jerusalem.

34. For Palestinians living in East Jerusalem, their situation would not be as precarious if, despite the illegality of annexation, they were treated equally and afforded access to quality education, health care and housing. Instead, Palestinians living in East Jerusalem are regarded as "permanent residents" and subject to a gradual and bureaucratic process of ethnic cleansing.[36] This has consisted of revocation of residency permits, demolitions of residential structures built without Israeli permits (often virtually impossible to obtain),[37] and forced evictions of Palestinian families, in violation of the basic right to adequate housing, enshrined in the International Covenant on Economic, Social and Cultural Rights.

35. A 2013 report by the United Nations Conference on Trade and Development on the Palestinian economy in East Jerusalem detailed Israeli policies that have impeded the natural growth of the Palestinian economy. It also noted that Palestinians are made to pay high municipal taxes in return for poor services and disproportionately low public expenditure in East Jerusalem.[38] This has been particularly evident with respect to education, characterized by a shortage of classrooms, a high overall dropout rate of 13 per cent among Palestinian schools in East Jerusalem, and a general neglect of the Arab schooling system in comparison to their Jewish counterparts literally metres away in West Jerusalem.[39]

36. The situation in East Jerusalem today is a microcosm of the fragmentation of territory taking place across the West Bank. Israel actively seeks to undermine the Palestinian presence to serve its goal of preserving a Jewish majority in East Jerusalem.

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[33] See www.mfa.gov.il/mfa/aboutisrael/state/law/pages/summary%20of%20opinion%20concerning%20unauthorized%20outposts%20-%20talya%20sason%20adv.aspx.

[34] See www.haaretz.com/news/diplomacy-defense/israel-to-legalize-four-west-bank-settlement-outposts-slated-for-demolition-1.524291.

[35] See www.jpost.com/Diplomacy-and-Politics/Knesset-panel-to-debate-Levy-Report-333137.

[36] A/65/331, para. 14, and A/HRC/20/32, para. 32.

[37] A/68/513, paras. 30–33.

[38] See http://unctad.org/en/PublicationsLibrary/gdsapp2012d1_en.pdf.

[39] See www.acri.org.il/en/2013/09/02/ej-edu-report-13.

This has been a policy of Israel for decades, acknowledged by the Jerusalem Municipality, to maintain a demographic balance of approximately 70 per cent Jewish to 30 per cent Palestinian in Jerusalem.[40]

37. Since 1996, an estimated 11,023 Jerusalem Palestinians have lost their resident status and right to live in occupied East Jerusalem.[41] During the period 2004–2013, 492 housing units were demolished in East Jerusalem, displacing 1,943 Palestinians. These figures account only for officially demolished housing units and do not include homes demolished by some owners after receiving a demolition order to avoid perverse heavy municipal penalties and demolition costs associated with the destruction of their own homes.[42]

38. The most problematic plan advanced in East Jerusalem in recent years has been the expansion of settlements and infrastructure around Har Homa, Gilo and Givat Hamatos, as well as the E1 settlement bloc to the east, which threatens to cut off East Jerusalem from the rest of the West Bank.[43] Eventual peace depends crucially on ensuring that Palestinian rights in East Jerusalem are not further jeopardized.

Corporate complicity in international crimes

39. Over the past two years, the Special Rapporteur focused attention on companies involved in business and financial activities related to the Israeli settlement enterprise as well as the possibility of corporate complicity in international crimes related to Israeli settlements in the West Bank, including East Jerusalem.[44]

40. The effort to focus on business activities in the settlements was made, in part, to bring a measure of accountability with respect to the emergent human rights obligations of companies in conformity with international law and the Guiding Principles on Business and Human Rights. The Special Rapporteur's intention was not only to provide a sound legal basis upon which to assess the complicity of businesses in international crimes related to the settlements, but also to clearly set out the risks and associated costs in terms of reputation, as well as the potential legal consequences of doing business in the settlements.

41. The responses received from some of the 13 companies analysed in an earlier report (A/67/379) were mixed. Nonetheless, there have been a number of recent developments in relation to the involvement of other businesses involved in the settlements to indicate that public pressure and media attention does bring some ethical dividends, and has encouraged Governments to be more vigilant.

42. Some positive developments in this regard include Royal HaskoningDHV, a Dutch company, which announced in September 2013 its decision to terminate a contract with the Jerusalem Municipality to build a wastewater treatment plant in East Jerusalem.[45] In December, Vitens, a Dutch water utility company, decided to cut its ties with Mekorot, the Israeli national water company, citing concerns in relation to the adherence of international laws.[46] Earlier, in August 2013, the Swedish-Norwegian bank Nordea excluded Cemex, one of the companies taken up in the Special Rapporteur's earlier report, from its investment

[40] "EU Heads of Mission Jerusalem Report 2012".

[41] Submission to Special Rapporteur by the Civic Coalition for Palestinian Rights in Jerusalem (November 2013).

[42] At 30 November 2013 (www.btselem.org/planning_and_building/east_jerusalem_statistics).

[43] "EU Heads of Mission Jerusalem Report 2012".

[44] A/67/379, A/HRC/23/21, A/68/376.

[45] See https://www.un.org/apps/news//story.asp?NewsID=45812&Cr=palestin&Cr1=.

[46] See www.jpost.com/Diplomacy-and-Politics/Dutch-firm-severs-ties-with-Mekorot-over-West-Bank-policy-even-as-Israel-Jordan-PA-sign-major-water-deal-334597.

portfolio, due to its extraction of non-renewable natural resources from occupied Palestine.[47] Such examples should lead the way for more countries and companies to follow suit, as well as alerting Governments to their responsibility to urge companies subject to their authority to act in accordance with international law.

43. While due diligence on the part of businesses is an inherent aspect of corporate responsibility, Governments also have the obligation, as noted by the fact-finding mission on settlements, to take measures to ensure that they do not recognize an unlawful situation arising from the illegal activities of Israel.[48] In this regard, the European Union guidelines which establish that all agreements between Israel and the European Union for grants, prizes and financial instruments funded by the European Union must now unequivocally and explicitly indicate their inapplicability to the territories occupied by Israel in 1967 represents a step in the right direction.

44. The Special Rapporteur is also encouraged by the recent issuance by the Government of the United Kingdom of Great Britain and Northern Ireland of guidelines for businesses, which for the first time outline the risks of trading with Israeli settlements, and specifically warn of the legal and economic risks stemming from the fact that the Israeli settlements, according to international law, are built on occupied land and are not recognized as a legitimate part of the territory of Israel.[49]

Trade with the settlements

45. The diligence shown by the European Union and some of its Member States regarding the responsibility of businesses operating in occupied Palestine naturally leads to the following question: Are the same human rights standards applied by countries when it comes to trade relations with the settlements? If the statements issued by the European Union and the United States protesting the expansion of settlements reiterate their illegality and illegitimacy, then steps should be taken to ensure that related actions also reflect a genuine commitment to human rights and respect for international law, for example by ceasing trade with the settlements starting with a ban on imports of settlement produce.

46. While produce originating in the Israeli settlements is not entitled to benefit from preferential tariff treatment under the European Union-Israel Association Agreement, fresh agricultural produce exported from the settlements — but falsely labelled as "made in Israel" — can still be found on many supermarket shelves across the European Union due to the voluntary nature of labelling requirements. Considering the fact that the European Union remains one of the most important trading partners for the settlements, with annual exports worth $300 million, a ban on settlement produce would have a significant impact. It should also not be forgotten that trade with settlements is linked to the violation of human rights with respect to Palestinian communities denied access to fertile agricultural land, water and other natural resources.

47. So long as illegal settlements are supported through trade, statements protesting the expansion of settlements from the main trading partners of Israel will have little resonance on the ground, and third party States will continue to be associated with the violation of human rights in occupied Palestine.

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[47] Palestinian BDS National Committee, submission to Special Rapporteur (November 2013).

[48] A/HRC/22/63, paras. 116–117.

[49] See www.theguardian.com/world/2013/dec/09/uk-government-warns-over-business-israeli-settlements.

IV. The Gaza Strip

48. In the space of six years since this Special Rapporteur assumed this mandate, the population of the Gaza Strip has lived through two major Israeli military operations (Cast Lead from December 2008 to January 2009 and Pillar of Defence in November 2012), and endured Israel's illegal blockade (in place since June 2007). Both conflicts inflicted disproportionate casualties and devastation on the Palestinian civilian population. This has been well documented by the United Nations.[50]

49. Since June 2013, the humanitarian situation in Gaza has worsened. In recent months, the destruction by the Egyptian authorities of most underground tunnels, which although problematic had been a lifeline to the residents, has had a particularly serious impact on the availability of fuel at affordable prices in Gaza. This has led to severe power shortages, resulting in shutdowns of sewage treatment facilities, and disruptions to specialized health services, such as kidney dialysis, operating theatres, blood banks, intensive care units and incubators, putting the lives of vulnerable patients in Gaza at risk.[51] The frequent closures of the Rafah crossing in recent months have generally prevented access to affordable health care in Egypt, which remains essential given the limitations of the Gaza health system.

50. The most egregious violations of human rights committed by Israel have been in its enforcement, using excessive force, of arbitrary access to restricted areas at sea and on land, profoundly affecting the lives of Palestinian fishermen and agricultural farmers and households dependent upon them. The more pervasive forms of human rights violations also linked to the blockade have been well documented by the Secretary-General (A/68/502), and include inter alia, severe restrictions on movement into and out of Gaza from Israel and adverse impacts on the rights of Palestinians in Gaza to education, health and work. In addition, severe export restrictions (and limitations on imports) undermine the potential of the Gaza economy, and accentuate the impoverished conditions that prevail in Gaza.[52] The recent refusal of Israel to allow exports from Gaza to the West Bank, despite a Dutch donation of a container security scanner, is emblematic of the denial of the right to development in Gaza, and undercuts claims by Israel that its actions are taken to serve genuine security concerns.[53]

V. The question of apartheid and segregation

51. In 2011, the Special Rapporteur reiterated the call made by his predecessor in 2007, for a referral to the International Court of Justice for an advisory opinion on the question of whether "elements of the [Israeli] occupation constitute forms of colonialism and apartheid".[54] More precisely, he recommended that the Court be asked to assess the allegations that the prolonged occupation of the West Bank and East Jerusalem possess elements of "colonialism", "apartheid" and "ethnic cleansing" inconsistent with international humanitarian law in circumstances of belligerent occupation and unlawful abridgement of the right to self-determination of the Palestinian people.[55] Since no advisory opinion has been sought following the aforementioned reports of successive Special Rapporteurs, in the present report the Special Rapporteur assumes part of the task of

[50] A/HRC/12/48, A/HRC/22/35/Add.1 and A/HRC/23/21.

[51] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14028&LangID=E.

[52] See www.cogat.idf.il/Sip_Storage/FILES/0/4320.pdf.

[53] See www.haaretz.com/news/diplomacy-defense/.premium-1.562465.

[54] A/HRC/16/72, para. 8, A/HRC/4/17, p. 3.

[55] A/HRC/16/72, para. 32(b).

analysing whether allegations of apartheid in occupied Palestine are well founded. He discusses Israeli policies and practices through the lens of the international prohibition of ethnic discrimination, segregation and apartheid.

Legal framework

52. Apartheid is prohibited under international law, and Israel, as a State and an occupying Power, is bound by this prohibition. Under Protocol I additional to the Geneva Conventions, which is declaratory of international law and therefore widely regarded as universally binding, "practices of 'apartheid' and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination" are included as grave breaches.[56] Further, the International Law Commission has noted that Governments at the United Nations Conference on the Law of Treaties (1968) generally agreed that the prohibitions constituting peremptory norms included apartheid.[57] In addition, article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that "States Parties particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction".[58] At the second universal periodic review of Israel in October 2013, South Africa recommended that Israel "prohibit policies and practices of racial segregation that disproportionately affect the Palestinian population in the OPT" (A/HRC/25/15, para. 136.202).

53. Apartheid involves the domination of one racial group over another, and some may argue that neither Israeli Jews nor Palestinians constitute racial groups per se. However, article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, in its definition of racial discrimination, makes it clear that race is in fact not the sole factor, but that racial discrimination may be based on "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin". The Committee on the Elimination of Racial Discrimination has stressed that under the definition in article 1 "the Convention relates to all persons who belong to different races, national or ethnic groups or to indigenous peoples".[59]

54. The International Convention on the Suppression and Punishment of the Crime of Apartheid, in article 2, provides a detailed definition of the crime of apartheid, providing that it "shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa", and applies to "inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them". The Rome Statute of the International Criminal Court echoes these core elements (art. 7, para. 2(h)) and further specifies that for such acts to constitute "crimes against humanity" they must be "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack" (art. 7, para. 1). Without prejudice to any possible differences in the elements of apartheid as an international crime and an internationally wrongful act, apartheid will be treated as a single concept for the purpose of the present report, which will be framed around the inhuman acts laid out in article 2(a)–(f)

[56] Art. 85(4)(c), A/HRC/16/72.

[57] Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), arts. 40–41 and commentaries.

[58] Regardless of the possibility that the Convention's inclusion of apartheid applies exclusively to South Africa, the Convention prohibits all forms of racial segregation. See Committee on the Elimination of Racial Discrimination, general recommendation No. 19 (1995).

[59] General recommendation No. 24 (1999), para. 1.

of the International Convention on the Suppression and Punishment of the Crime of Apartheid.[60]

Acts potentially amounting to segregation and apartheid

55. Article 2(a) concerns denial of the right to life and liberty of person, including by (i) murder; (ii) serious bodily and mental harm, infringement of freedom, and torture, and (iii) arbitrary arrest and illegal imprisonment. With respect to article 2(a)(i), continuing excessive use of force by Israeli security forces (ISF) and a lack of accountability for violations of international humanitarian law and international human rights law is well-documented by successive United Nations resolutions and reports.[61] Palestinians are killed as a result of regular Israeli military incursions into occupied Palestine; lethal use of force against demonstrators; official endorsement of targeted killings; and large-scale military operations.[62]

56. According to B'Tselem, between 1987 and 2000 just under 1,400 Palestinians were killed by ISF.[63] After the year 2000, deaths of Palestinians caused by ISF accelerated, with more than 6,700 deaths, as at October 2013.[64] Of this number, over 3,100 were civilians not involved in hostilities. B'Tselem's statistics show that during Israel's "Cast Lead" operation in Gaza, of the 344 children reportedly killed, 318 did not take part in hostilities. During the same operation, of the 110 Palestinian women recorded as killed, two were police officers and the remaining 108 did not take part in the hostilities. During operation "Pillar of Defence", approximately 100 Palestinian civilians, a third of whom were children, were reportedly killed as a result of ISF actions (A/HRC/22/35/Add.1, para. 6).

57. Additional deaths were caused by the ISF policy of targeted killing, which resulted in the killing of 369 Palestinians during the period September 2000–December 2013. Moreover, on average, for every person killed as a target of ISF, one or two other persons have been killed in any given operation. Thus, during the same period, 453 Palestinians who were not targets were also killed.[65]

58. Individual accounts by former soldiers of the Israel Defense Forces (IDF), published by the Israeli NGO Breaking the Silence, bear witness to Israeli policy in respect to the occupied people: " 'Prevention of terror' is the stamp of approval granted to any offensive IDF action in the Territories, obscuring the distinction between the use of force against terrorists and the use of force against civilians. In this way, the IDF is able to justify actions that intimidate and oppress the Palestinian population overall."[66]

59. Under a simple interpretation, the term murder, as referred to in the International Convention on the Suppression and Punishment of the Crime of Apartheid, signifies the unlawful taking of life. Therefore, the taking of lives — outside the limited circumstances in which international humanitarian law and international human rights law do not absolutely prohibit this — potentially constitutes an element of apartheid, in the context of a systematic and institutional regime in which these unlawful killings form part of acts

[60] Israel is not a party to the Convention and it is debated whether it was intended to apply exclusively to South Africa. Nonetheless, it continues to inform the prohibition of apartheid in international law.

[61] E.g. A/68/502, A/67/372, A/66/356, A/65/366, A/HRC/22/35; General Assembly resolution 67/118; and Human Rights Council resolutions 22/28 and 19/16.

[62] Russell Tribunal, *Findings* (2011), para. 5.22.

[63] See www.btselem.org/statistics.

[64] Ibid.

[65] See www.btselem.org/statistics.

[66] *Israeli Soldier Testimonies 2000-2010*, p. 26 (www.breakingthesilence.org.il/testimonies/publications).

carried out in order to maintain dominance over Palestinians. The relatively high proportion of civilian casualties caused by ISF in occupied Palestine is notable in this respect.

60. In regard to article 2(a)(ii) and (iii), detention by Israel of Palestinians is closely linked to the occurrence of torture and ill-treatment. According to the Prisoner Support and Human Rights Association, Addameer, in September 2013, there were some 5,000 Palestinian political prisoners, including 137 administrative detainees.[67] Many detainees are transferred to prisons in Israel, in violation of the Fourth Geneva Convention (art. 76).[68]

61. In 2012, the Committee on the Elimination of Racial Discrimination urged Israel to end administrative detention, which is discriminatory and constitutes arbitrary detention under international human rights law (CERD/C/ISR/CO/14-16, para. 27). Similar recommendations were made by a number of States during the most recent universal periodic review of Israel (A/HRC/25/15). The Committee further recommended that Israel ensure equal access to justice for all persons living in territories under its effective control, noting that Jewish settlers in occupied Palestine are subject to a civil law regime, while a military regime applies to Palestinians in the West Bank, including East Jerusalem.

62. Despite the absolute prohibition of torture,[69] Palestinians detained by Israel continue to be subjected to torture and ill-treatment (A/68/379).[70] Methods of torture and ill-treatment reportedly include: sleep deprivation; excessive use of handcuffs; beatings; verbal abuse; stress positions; solitary confinement; humiliation; and threats of killing, sexual assault and house demolitions, against the detainee or his or her family.[71]

63. In 1999 the Israeli High Court said that using certain methods of physical pressure for the purpose of "breaking" a detainee are unlawful and that interrogation methods must be fair and reasonable, and respectful of human dignity.[72] While representing an important recognition of the illegality of certain methods of torture employed against Palestinian detainees, the decision failed to outlaw torture by allowing the "ticking bomb" or "necessity" defence. According to Addameer, "necessity" is used by interrogators as a blanket defence with little to no accountability.[73] The Public Committee against Torture in Israel reported that of 701 formal complaints of torture submitted between 2001 and 2010, none resulted in a criminal investigation.[74]

64. Palestinian children are not exempt. In 2013, UNICEF concluded that "Ill-treatment … appears to be widespread, systematic and institutionalized"[75] in the case of Palestinian children held in the Israeli military detention system. Israeli authorities seem to have taken some limited steps towards meeting the UNICEF recommendations,[76] including by piloting test summons in two West Bank areas instead of conducting frightening night arrests of children.[77] While this is clearly a needed development, it also shows just how

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[67] See www.addameer.org/einside.php?id=9.

[68] See www.addameer.org/etemplate.php?id=302.

[69] Draft Articles.

[70] A/68/379.

[71] See www.addameer.org/etemplate.php?id=294 and www.stoptorture.org.il/en/skira1999-present.

[72] See www.btselem.org/torture/hcj_ruling.

[73] See www.addameer.org/etemplate.php?id=294.

[74] *Accountability Still Denied* (2012), p. 4 (www.stoptorture.org.il/files/PCATI_eng_web.pdf). The formal complaints may not be representative of the actual number of victims.

[75] *Children in Israeli Military Detention*, p. 1 (www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf).

[76] See www.unicef.org/oPt/UNICEF_oPt_Children_in_Military_Detention_Bulletin_No_1_October_2013.pdf.

[77] See also A/68/379 and CRC/C/ISR/CO/2-4.

basic the denial and lack of protection of Palestinian children's rights is under the Israeli military legal regime. By comparison, Israeli settler children in conflict with the law are subject to regular Israeli law. According to Defence for Children International, as at October 2013, 159 Palestinian children were in Israeli military detention.[78] On average, around 700 children are detained and prosecuted per year, most commonly on charges of throwing stones.[79]

65. The regular denial by Israel of the right to life and liberty of significant numbers of Palestinians is reflected in its policies, laws and practices in occupied Palestine.

66. Article 2(b) refers to the imposition of living conditions calculated to cause a group's physical destruction in whole or in part. It seems unlikely that the policies, laws and practices of Israel can be said to have as their aim the physical destruction of the occupied people.[80]

67. Article 2(c) concerns measures calculated to prevent participation in the political, social, economic and cultural life of the country and the full development of a racial group, including and especially by denying them their rights to work, to education, to leave and to return to their country, to nationality, and to freedoms of movement and residence, opinion and expression, and peaceful assembly and association.

68. Violations of many of these rights have already been touched on in preceding sections. For instance the violations by Israel of the rights to work, education, freedom of movement and residence, and freedom of expression and assembly have been illustrated in the context of discussing the wall and its associated regime, and policies and laws related to the development of settlements, including in East Jerusalem. The rights to work, to freedom of movement, and to leave and return to one's country, are particularly relevant to Gaza. In the West Bank, the denial of rights to Palestinians is made possible by the existence of parallel legal systems operating in the same territory: one set of civil and criminal laws for Israeli settlers and another for Palestinian Arabs, subject to Israeli military orders, as well as other laws. While the Israeli High Court of Justice formally exercises judicial oversight of the Israeli administration in occupied Palestine, according to NGOs, case law illustrates a trend whereby major policy decisions of government, e.g. relating to the wall and settlements, tend to be immune from judicial intervention, and that human rights and protection under international humanitarian law have not been adequately upheld by the High Court in its rulings.[81] The creation of Israeli legal zones for settlers and the resulting segregation was noted in the 2013 report by the independent fact-finding mission on settlements (A/HRC/22/63). The Committee on the Elimination of Racial Discrimination in 2012 expressed that it was "extremely concerned" at policies and practices amounting to de facto segregation and that it was "particularly appalled at the hermetic character of the separation of the two groups" (CERD/C/ISR/CO/14-16, para. 24).

69. It is clear that Israeli measures, in the form of policies, laws and practices, have the effect of preventing Palestinians from full participation in the political, social, economic and cultural life of Palestine and arguably also prevent their full development in both the West Bank and the Gaza Strip.

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[78] See www.dci-palestine.org/content/child-detainees.

[79] See www.addameer.org/etemplate.php?id=296.

[80] The United Nations has questioned whether Gaza will be a liveable place in 2020 ("*Gaza in 2020: A Liveable Place?*" 2012). Considering the situation in Gaza, the Russell Tribunal found that Israeli policies aimed at causing displacement of Palestinians, rather than their physical destruction.

[81] Information from Diakonia.

70. Article 2(d) refers to measures designed to divide the population along racial lines including by the creation of separate reserves and ghettos for the members of a racial group or groups, and the expropriation of landed property. The expropriation of Palestinian land is an obvious part of the expansion of settlements and of the construction of the wall. The fragmentation of Palestinian land and creation of separate reserves and enclaves, including the plans threatening to cut off East Jerusalem from the rest of the West bank, is well documented (A/HRC/22/63). The final conclusions of the Russell Tribunal on Palestine state: "Israel has through its laws and practices divided the Israeli Jewish and Palestinian populations and allocated them different physical spaces, with varying levels and quality of infrastructure, services and access to resources. The end result is wholesale territorial fragmentation and a series of separate reserves and enclaves, with the two groups largely segregated. The Tribunal heard evidence to the effect that such a policy is formally described in Israel as *hafrada*, Hebrew for 'separation' ".[82] The Special Rapporteur has previously drawn attention to the dual system of roads in the West Bank, as a clear example of segregation, where Palestinians are largely relegated to alternative roads and forced to take long detours (A/HRC/16/72, paras. 20–22).

71. It seems incontestable that Israeli measures do divide the population of the Occupied Palestinian Territory along racial lines, create separate reserves for Palestinians and expropriate their land.

72. Article 2(e) refers to exploitation of labour. There exist historical reports[83] as well as current campaigns and reports[84] which address poor working conditions of Palestinian citizens working in Israel or in settlements. However, it is noted that there has been a sharp drop in Israeli use of Palestinian workers since the 1990s, especially as it is now impossible for Gazans to work in Israel and since in the West Bank the construction of the wall has further diminished the number of Palestinians working in Israel or for Israeli employers.[85]

73. Article 2(f) concerns persecution of those who oppose apartheid. This provision potentially relates to a wide range of human rights violations against Palestinians in the Occupied Palestinian Territory, who as a people desire self-determination and oppose the segregation, restrictions and discriminatory regime imposed by Israel on them. In this sense, the punitive response often meted out to those who demonstrate against the wall and its associated regime, or more generally oppose Israeli violations of human rights, arguably fall under this provision.

74. An individual case in point concerns the Palestinian human rights defender Issa Amro, who is a founder of the NGOs Youth Against Settlements and Hebron Defenders. In 2012, Mr. Amro was arrested and detained 20 times without charge.[86] At the time of writing, he had been detained multiple times in 2013 and had been hospitalized, allegedly following a beating by ISF while in detention. In August 2013, a number of special rapporteurs, including this Special Rapporteur, expressed deep concern at the alleged ongoing judicial harassment, intimidation and abusive treatment of him. According to the Special Rapporteur on the situation of human rights defenders: "This is an unacceptable campaign of harassment, intimidation and reprisals against Mr. Amro, and other human

[82] Russell Tribunal, *Findings*, para. 5.39.

[83] See http://unispal.un.org/UNISPAL.NSF/1ce874ab1832a53e852570bb006dfaf6/57c45a3dd0d46b09802564740045cc0a?OpenDocument.

[84] See www.business-humanrights.org/Links/Repository/1023856, http://www.dci-palestine.org/documents/palestinian-children-invisible-workers-israeli-settlements.

[85] Russell Tribunal, *Findings*, para. 5.40.

[86] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13626&LangID=E.

rights defenders who peacefully advocate for the rights of Palestinians in the West Bank, including by cooperating with [United Nations] human rights bodies."[87]

75. An example of an Israeli citizen, belonging to the Druze minority, who has reportedly been imprisoned for his conscientious objection to serving in the Israeli army is Omar Saad. In an open letter to the Prime Minister and Minister of Defense he explained: "I couldn't imagine myself wearing military uniform and participating in the suppression of my Palestinian people". He asked: "How can I be a soldier standing at Qalandia checkpoint or any other checkpoint, after I experienced the injustices at these checkpoints? How can I prevent someone from Ramallah to visit his city, Jerusalem? How can I guard the apartheid wall? How can I be a jailer to my own people while I know that the majority of prisoners are freedom prisoners and seekers of rights and freedom?"[88]

76. It is strongly arguable that those who oppose Israeli measures amounting to apartheid risk persecution because of their opposition.

Systematic oppression

77. None of the human rights violations discussed in the context of possibly constituting "inhuman acts" for the purpose of the International Convention on the Suppression and Punishment of the Crime of Apartheid or the Rome Statute can be said to be isolated events. Rather, their commission reflects systematic and discriminatory Israeli policies, laws and practices, which determine where in the occupied land Palestinians may or may not travel, live and work. Laws and policies have also institutionalized just how lightly a civilian Palestinian life may be weighed, when placed on the scales against claims of overarching security concerns, contrasting with the legal protection of the Israeli constitutional system given to unlawful Israeli settlers. The combined effect of the measures designed to ensure security for Israeli citizens, to facilitate and expand settlements, and, it would appear, to annex land, is *hafrada*, discrimination and systematic oppression of, and domination over, the Palestinian people.

VI. Concluding remarks

78. Through prolonged occupation, with practices and policies which appear to constitute apartheid and segregation, ongoing expansion of settlements, and continual construction of the wall arguably amounting to de facto annexation of parts of the occupied Palestinian territory, the denial by Israel of the right to self-determination of the Palestinian people is evident. The Draft Articles on Responsibility of States for Internationally Wrongful Acts provide guidance as to the consequences of serious breaches of peremptory norms under international law. In this respect there is authority[89] to suggest that the following prohibitions have attained the status of peremptory norms: aggression through military occupation and imposition of military blockades on ports and coasts,[90] racial discrimination and apartheid, and torture. In addition, the right to self-determination itself has been recognized as a peremptory norm which applies *erga omnes*.[91]

79. Under article 40, paragraph 2, of the Draft Articles, for breaches of peremptory norms to be "serious" they must "involve a gross or systematic failure of the responsible

[87] Ibid.
[88] See www.wri-irg.org/node/20565.
[89] Draft Articles, chap. III.
[90] General Assembly resolution 3314(XXIX).
[91] Draft Articles, chap. III, commentary.

State to fulfil the obligation". Without prejudice to an authoritative determination of whether the breaches of the discussed peremptory norms qualify as "serious", it is noted that the violations discussed in the context of the prolonged occupation appear deliberate, organized, institutionalized and longstanding. In the commentary, the International Law Commission considers it likely that competent international organizations, including the Security Council and the General Assembly will address such serious breaches. The implications for Member States for serious breaches of this nature include an obligation to cooperate to bring an end to breaches, and an obligation not to recognize or maintain the illegal situation.[92]

80. Finally, from the point of view of international criminal law, with the General Assembly's recognition of Palestinian statehood, the opportunity for Palestine to accept the jurisdiction of the International Criminal Court is now clear. While a declaration was lodged by the Palestinian Minister of Justice in 2009 purporting to accept its jurisdiction "for acts committed on the territory of Palestine since 1 July 2002",[93] it seems the Court's decision of 3 April 2012 on the question of jurisdiction[94] had the effect of closing the preliminary examination.[95] An acceptance of jurisdiction would potentially bring a measure of accountability for key individuals, and address violations related to the crime of apartheid and other issues flowing from the more than 400 communications on crimes allegedly committed in Palestine, received by the Office of the Prosecutor of the International Criminal Court since 2009.[96]

VII. Recommendations

81. **In this, his final report, the Special Rapporteur takes the opportunity to reiterate some past recommendations and add several new ones, namely that:**

(a) Palestinian legal rights, including the right of self-determination, be fully respected and implemented in attempts to reach a peaceful and just resolution of the conflict between these two peoples;

(b) The General Assembly request the International Court of Justice to issue an advisory opinion on the legal status of the prolonged occupation of Palestine, as aggravated by prohibited transfers of large numbers of persons from the occupying Power and the imposition of a dual and discriminatory administrative and legal system in the West Bank, including East Jerusalem, and further assess allegations that the prolonged occupation possesses legally unacceptable characteristics of "colonialism", "apartheid" and "ethnic cleansing";

(c) The Human Rights Council appoint an expert group to propose a special protocol to the Fourth Geneva Convention with the specific purpose of proposing a legal regime for any occupation that lasts for more than five years;

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[92] Ibid., art. 41.

[93] See www.icc-cpi.int/NR/rdonlyres/74EEE201-0FED-4481-95D4-C8071087102C/279777/20090122PalestinianDeclaration2.pdf.

[94] See www.icc-cpi.int/NR/rdonlyres/C6162BBF-FEB9-4FAF-AFA9-836106D2694A/284387/SituationinPalestine030412ENG.pdf.

[95] See www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Documents/OTP%20Preliminary%20Examinations/OTP%20-%20Report%20%20Preliminary%20Examination%20Activities%202013.PDF.

[96] See www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/pe-cdnp/palestine/Pages/palestine.aspx.

(d) The international community comprehensively investigate the business activities of companies and financial institutions registered in their own respective countries, which profit from the settlements of Israel and other unlawful Israeli activities, and take appropriate action to end such practices and ensure appropriate reparation for affected Palestinians. Member States should consider imposing a ban on imports of settlement produce;

(e) Future investigations consider whether other foreign corporate connections with unlawful occupation policies additional to settlements (e.g. separation wall, Gaza blockade, house demolitions, excessive use of force) should not be also deemed "problematic" under international law, and treated in a manner analogous to the recommendations pertaining to settlements;

(f) The Government of Israel cease expanding and creating settlements in occupied Palestine, start dismantling existing settlements and returning its citizens to the Israeli side of the Green Line, provide appropriate reparations for the damage due to settlement and related activity since 1967, and act diligently to protect Palestinians living under Israeli occupation from settler violence;

(g) The Government of Israel forthwith lift the unlawful blockade of Gaza, cease military incursions, allow Gazans to benefit fully from their natural resources situated within their borders or off the coast of Gaza, and take account of a deepening emergency in Gaza;

(h) The Human Rights Council pay increased attention to the failure by Israel to cooperate with the normal functioning of the United Nations by way of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,[97] and to the protection of Special Rapporteurs from defamatory attacks diverting attention from substantive issues integral to the mandate.

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[97] In 2013, the Special Rapporteur joined 71 other independent experts in an appeal to Member States to cooperate with their mandates (www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14083&LangID=E).